

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSHUA KELLIER,

Petitioner,

-against-

WARDEN BRIAN McAULIFFE, Riverview
Correctional Facility,

Respondent.

24-CV-9583 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Petitioner, who is appearing *pro se*, brings this petition for a writ of *habeas corpus* under 28 U.S.C. § 2241, challenging what he describes as his July 25, 2024 conviction of “criminal contempt of court,” but what seems to be his conviction of sexual abuse in first degree, in the New York Supreme Court, New York County; he also seems to allege that he is currently serving a seven-year prison term, to be followed by a 10-year term of probation, in connection with that conviction. The Court denies the petition without prejudice for the following reason.

Petitioner has previously submitted to this court a substantially identical petition setting forth the same challenges to the same conviction. That petition commenced an action that is presently pending before the Court under docket number 24-CV-8253 (LTS).¹ As the present petition raises the same claims, no useful purpose would be served by litigating this duplicative

¹ By order dated January 16, 2025, the Court construed the submission as a petition for a writ of *habeas corpus* brought under 28 U.S.C. § 2254, notified Petitioner that, if he does not want to pursue relief under Section 2254, to notify the Court within 60 days, and granted Petitioner 60 days’ leave to file an amended Section 2254 petition to address issues of conformance with Rule 2(c) of the Rules Governing Section 2254 Cases, exhaustion of available state court remedies, and the timeliness of the petition. ECF 1:24-CV-8253, 31.

action. The Court therefore denies this petition without prejudice to Petitioner's pending action under docket number 24-CV-8253 (LTS).²

CONCLUSION

The Court denies the present petition without prejudice as duplicative of No. 24-CV-8253 (LTS).

Because the present petition at this time makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and, therefore, *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Court directs the Clerk of Court to enter judgment in this action.

SO ORDERED.

Dated: January 24, 2025
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

² To the extent that the petition in this action includes facts or attachments not included in the original submission in No. 24-CV-8253 (LTS), Petitioner may include those facts or attachments in any amended petition he files in response to the Court's order in No. 24-CV-8253 (LTS).